

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7248 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil
Judge? No

RANJANBEN WIDOW OF JAGDISH DHIRAJLAL VORA

Versus

COMPETENT AUTHORITY AND DY. COLLECTOR(ULC)

Appearance:

Shri J.R. NANAVATY, Advocate, for the Petitioner.

Shri T.H.SOMPURA, Assistant Government Pleader, for
the Respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 12/03/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 24th July 1984 under section 8 (4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the common appellate order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 14th June 1988 inter alia in Appeal No.Rajkot-1504 of 1984 is under challenge in this petition under Article 226 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the predecessor-in-title (the deceased for convenience) of the petitioner to be in excess of the ceiling limit by 73.85 square metres.

2. The facts giving rise to this petition move in a narrow compass. The deceased filed his declaration in the prescribed form under section 6 (1) of the Act with respect to his holding within the urban agglomeration of Rajkot. It appears that his holding included certain parcels of land bearing plots Nos.1, 13, 19 and 29 from survey No.397 (the disputed lands for convenience). The deceased had obtained the permission under section 21 (1) of the Act from respondent No.1 qua the disputed lands. The declaration filed by the deceased was processed by respondent No.1. After observing the necessary formalities under section 8 of the Act, by his order passed on 24th July 1984 under section 8 (4) thereof, respondent No.1 declared the holding of the deceased to be in excess of the ceiling limit by 73.85 square metres. Its copy is at Annexure-A to this petition. That aggrieved the deceased. He carried the matter in appeal before respondent No.2 under section 33 of the Act. It came to be registered as Appeal No.Rajkot-1504 of 1984. It was heard along with the other allied appeals. By the common appellate order passed on 14th June 1988 inter alia in the aforesaid appeals, respondent No.2 dismissed the petitioner's appeal. Its copy is at Annexure-B to this petition. Thereafter, the deceased breathed his last leaving behind him his widow as his heir and legal representative. She has thereupon approached this Court by means of this petition under Article 226 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition.

3. Learned Assistant Government Pleader Shri Sompura for the respondents has brought to my notice that, pursuant to the impugned orders at Annexures-A and B to this petition, the final statement was prepared and the notification under section 10 (3) of the Act was issued and possession of the surplus land was obtained after

giving notice under section 10 (5) thereof before this petition was filed in this court. It cannot be gainsaid that the effect of the issue of the notification under section 10 (3) of the Act is vesting of the surplus land in the State Government free from all encumbrances. In this case, the possession of the surplus land pursuant to the impugned orders has also been taken away by and on behalf of the State Government. Despite that position, the petitioner has not chosen to challenge either the notification under section 10 (3) of the Act or the action of taking possession of the surplus land after issuing notice under section 10 (5) thereof. In that view of the matter, this petition can be said to have become infructuous on account of the aforesaid events occurring between the date of the appellate order at Annexure-B to this petition and the date of the order passed on 27th October 1988 entertaining this petition for final hearing.

4. Learned Advocate Shri Nanavaty for the petitioner has however submitted that the permission under section 21 (1) of the Act qua the disputed lands has been cancelled by the order passed by respondent No.1 on 11th June 1986 as affirmed in appeal by respondent No.2 by the appellate order passed on 15th March 1988. I am also informed at the Bar that the aforesaid orders have been challenged before this court by means of Special Civil Application No.7252 of 1988. Learned Advocate Shri Nanavaty for the petitioner has urged that, in case the petitioner fails in his challenge or that the petitioner fails to comply with the directions given by this court in the aforesaid writ petition after upsetting the orders under challenge in that petition, the disputed lands will be included in the holding of the deceased for the purpose of deciding the extent of the excess land in his holding over and above what is declared excess by the impugned order under challenge in this petition. In that case, it has been urged by learned Advocate Shri Nanavaty for the petitioner that respondent No.1 deserves to be directed to take into consideration the constructed properties for the purpose of exclusion thereof from the holding of the deceased in the light of the binding ruling of the Supreme Court in the case of MEERA GUPTA v. STATE OF WEST BENGAL reported in AIR 1992 SUPREME COURT at page 1567.

5. It may be noted that, if any order is passed under section 21 (2) of the Act with respect to the disputed lands, such lands will be declared as excess vacant land and in that case it has been provided therein that the provisions of Chapter III would apply. The

Scheme of the Act makes it clear that Chapter III of the Act starts from section 3 thereof. In that case, respondent No.1 would certainly follow the procedure prescribed under Chapter III for the purpose of determining the excess vacant land in the holding of the deceased. The petitioner may make appropriate submissions before respondent No.1 when the case is reopened on cancellation of the permission qua the disputed lands under section 21 (2) of the Act. She may cross the bridge when she reaches it. The point may not be decided in advance at this stage. Respondent No.1 would certainly act according to law as applicable and prevalent at the relevant time in the light of the latest Supreme Court rulings.

6. In view of my aforesaid discussion, I am of the opinion that the impugned orders at Annexures-A and B to this petition call for no interference by this court in this petition. It deserves to be rejected.

7. In the result, this petition fails. It is hereby rejected. This judgment of mine shall not however preclude respondent No.1 from taking any appropriate proceedings if the permission qua the disputed lands granted earlier is cancelled by the appropriate order passed under section 21 (2) of the Act if it becomes final on any count. It is made clear that at that stage it would be open to the petitioner to make her say in the matter based on the relevant binding Supreme Court rulings applicable to the case on hand. Rule is accordingly discharged with no order as to costs.

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